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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Streamlining the International Section 214 Authorization Process and Tariff Requirements	)	IB Docket No. 95-118
	)	

COMMENTS

MCI TELECOMMUNICATIONS CORPORATION

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SUMMARY

MCI fully supports the Commission's efforts to streamline the Section 214 applications process. Replacing outdated and burdensome requirements imposed on the industry, and ultimately the public interest, is a significant step to facilitating rapid entry into the international telecommunications market place and fosters the competitiveness of U.S. industry.

MCI is in favor of most of the Commission's proposals, subject to some modification and clarification. Specifically, MCI recommends that the Commission: (1) incorporate an effective mechanism for notifying applicants when Section 214 authorizations will not be granted; (2) continue to impose 214 filing requirements on dominant U.S. carriers conveying capacity in submarine cables to other U.S. carriers; (3) incorporate safeguards in its proposed streamlined Cable Landing License Application Procedure; (4) reduce to one day the tariff filing notice period for international non-dominant common carriers; and (5) institute a further proceeding in the event it obtains forbearance authority.

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COMMENTS

MCI Telecommunications Corporation (MCI) hereby submits its initial comments in response to the Federal Communications Commission's (Commission's or FCC's) Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding. MCI strongly endorses the Commission's objective of streamlining Section 214 procedures under its rules and, in the process, eliminating unnecessary and burdensome filing requirements that interfere with market processes and effective competition. While proposing streamlined Section 214, tariffing and reporting processes in appropriate circumstances, nevertheless, the Commission properly recognizes its statutory obligation "to guard against abuses of monopoly power where effective competition does not yet exist."[1/]

In responding to the proposals advanced in the NPRM, MCI will briefly suggest how the FCC may best reach its stated goals, while maintaining necessary safeguards to guard against potential

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[1/] NPRM at ¶ 5.

discrimination and anticompetitive harm. Specifically, MCI recommends that the Commission refine its proposal in certain respects in order to realize its purposes in conducting this proceeding.

I. AN EFFECTIVE COMMUNICATIONS MECHANISM SHOULD BE INCORPORATED IN THE COMMISSION'S REVIEW/DENIAL OF SECTION 214 APPLICATIONS UNDER A STREAMLINED PROCESS

The Commission has a stated objective of reducing regulation where the public interest permits it to do so.[2/] Here, it proposes to amend Section 63.01 and 63.15 of its rules to facilitate the receipt of authorizations for broad grants of authority to provide "international services over authorized facilities to virtually all countries of the world."[3/] This streamlined processing, however, would only be available to nondominant facilities-based carriers. If the applications are not contested within 21 days, they would be granted 35 days after the date of their public notice.[4/]

MCI agrees that it would not be inappropriate -- indeed, the public interest would be served -- if nondominant applicants were entitled to file applications seeking the broadest possible

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[2/] See, Regulation of International Common Carriers Services, 7 FCC Rcd 7331 (1992).

[3/] NPRM at ¶ 10.

[4/]. The Commission reserves the right to determine that a particular application should not be subject to streamlined processing, in which case it would notify the applicant by public notice or letter within 28 days of the date of public notice.

Section 214 authority for the provision of services and the use of authorized facilities by which to provide those services, subject to an "exclusion list" establishing countries and facilities on which the Commission has imposed restrictions.

In instances where an application is uncontested, but the Commission determines that further review is necessary, MCI strongly encourages the Commission to inform the applicant in writing, as well as by public notice. By providing notice to the applicant of the reasons why an application needs further review, the Commission would enable the applicant to assemble and furnish additional information, respond to Commission concerns, file an individual application for the proposed service, or otherwise make any necessary amendments to the pending applications as quickly as possible. To further facilitate the application process, MCI recommends that when the Commission has notified an applicant that its application requires further review, such notification identify the FCC staff person assigned to reviewing the application, as well as a target date for its grant.

MCI strongly supports the Commission's general proposal to streamline the 214 application process and fully appreciates the value of eliminating the requirement of filing individual applications to initiate or expand service to a particular country on a particular authorized facility. The use of a "global" Section 214 application will help the Commission achieve

its stated goals of facilitating market entry and furthering the public interest, while maintaining the safeguards necessary to avoid potential abuse or discrimination in the market place.

II. DOMINANT U.S. CARRIERS SHOULD BE REQUIRED TO FILE 214 APPLICATIONS TO CONVEY TRANSMISSION CAPACITY IN SUBMARINE CABLES TO OTHER U.S. CARRIERS

The Commission is proposing to allow "dominant carriers to convey transmission capacity in submarine cables to other carriers without prior Section 214 authority."[5/] While MCI recognizes that there is no requirement in the Communications Act that conveyance of capacity from one U.S. carrier to another U.S. carrier be subject to prior FCC authorization, MCI believes that the public interest requires that such prior authorization be obtained, at least for the time being.

Even though terms and conditions relating to submarine cable conveyances are mutually derived and the amount of available capacity and the number of new users has increased in recent years, dominant carriers still possess the incentive to frustrate their nondominant carrier competitors' ability to negotiate reasonable rates in the purchase of those interests. Furthermore, these carriers can fashion private, exclusive arrangements with others and thereby advance their strategic goals.

[5/] NPRM at ¶ 30.

MCI submits that the existing Section 214 application process for the conveyance of cable capacity by dominant carriers is valuable because it affords an opportunity for public notice and comment in response to proposed transactions. The Commission, however, mistakenly concludes that because none of the dominant carrier's -- AT&T Corp.'s (AT&T's) -- applications has been addressed recently by third parties, the process itself has become superfluous.[6/] MCI continues to maintain its position, as previously set forth in its opposition to AT&T's Petition to Eliminate Requirements that Certain U.S. Carriers obtain Commission Authorization Prior to Conveying Interests in Communications Facilities to Other U.S. Carriers, ISP-93-012 (December 15, 1994), that AT&T should be required to provide the following information in connection with the conveyance of transmission capacity to other U.S. carriers: (1) name of the party to whom the capacity is to be conveyed; (2) name of the facility in which capacity is to be conveyed; (3) amount of capacity to be conveyed; and (4) price of the capacity to be conveyed. The continued submission of this information will allow the Commission and interested members of the public to remain aware of these important transactions that directly affect the availability of market place offerings.

[6/] Even if AT&T were to be declared "nondominant" pursuant to the pending proceeding in Docket FCC 799-252, MCI submits that AT&T's overwhelming control and historical dominance over cable and other transmission facilities require that procedures be enacted, such as the one suggested herein, in order to protect against potential anticompetitive conduct.

It is undeniable that, while the number of competing carriers and the availability of capacity has greatly increased in recent years, AT&T continues to be the dominant carrier and the largest owner, procurer and transferor of capacity. It is therefore premature, particularly at this critical juncture in the development of a competitive market place, for the Commission to further reduce regulation by entirely relieving the dominant carrier of this filing requirement.

If the Commission is nevertheless intent on reducing the regulatory burden on dominant carriers in connection with the conveyance of cable capacity, MCI suggests that, rather than eliminating the Section 214 process altogether, the Commission could reduce from 30 to 14 days the period for addressing applications. The application process would be shortened, but the Commission and interested third parties would be able to determine whether the proposed conveyances would be in the public interest.

III. THE COMMISSION MUST INCORPORATE SAFEGUARDS IN ITS PROPOSED STREAMLINED CABLE LANDING LICENSE APPLICATION PROCEDURE TO GUARD AGAINST POTENTIAL ABUSE AND MONITOR THE FACILITIES PLANNING PROCESS

MCI supports the Commission's proposal to streamline Section 1.767 by eliminating the need to address the "proposed use, need and desirability of the cable."[7] As the Commission notes, this

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[7] NPRM at ¶ 38.

information is unnecessary in order to enable the Commission to rule on the application. Further, MCI commends the Commission's initiative in preparing to lift the costly burden of performing extensive location studies and environmental surveys to identify precise landing points in a company's initial application. MCI cautions the Commission, however, that adoption of less stringent requirements to land and/or operate submarine cables between the United States and foreign points may encourage the filing of frivolous applications from companies whose intentions to actually construct and/or operate submarine cables are, at best, remote. Moreover, by reducing the information to be included in these applications and by minimizing the initial investment threshold, potential abuse is invited.

Under a more relaxed filing requirement for obtaining Section 1.767 licenses, the ability of a company to assess the future availability of cable capacity on any given route will be diminished if applications are granted that do not identify the precise landing points. While it is helpful for a market entrant to be able to obtain a license from the Commission, and with it some assurance that it can land a cable; on the other hand, a requirement that studies be provided in support of an application suggests that the applicant is committed to the project.

To reduce the risk of uncertainty in the availability of future capacity, MCI recommends that the FCC require, at a

minimum: (1) the filing of semi-annual or annual updates that include a projected date when the precise landing points will be identified, which date must in all instances be no less than 90 days before the construction is to begin, in accordance with the Commission's initial proposal at ¶ 39 of the NPRM; and/or (2) each applicant to disclose to an interested party, upon written request, information concerning the location and timing for the construction of the cable facility

MCI recommends that the Commission also reserve the right to review any licenses and, where appropriate, revoke them if their continuing in effect would be contrary to the public interest, subject to prior public notice and an attendant comment period. MCI urges the Commission to adopt one or both of these suggestions -- or similar oversight mechanisms -- because the desirability (and likely result) of reducing burdensome filing requirements must always be balanced by a regulatory program that involves the monitoring of the overall facilities planning process.

IV. SEPARATE RULES IDENTIFYING STANDARD CONDITIONS FOR 214 AUTHORIZATIONS MUST REQUIRE THAT DOMINANT CARRIERS FILE APPLICATIONS FOR CABLE CAPACITY CONVEYANCES TO OTHER U.S. CARRIERS

In creating a new section of the Commission's rules that "identifies the standard conditions" that are normally placed on carriers in connection with the receipt of Section 214 authorizations, MCI suggests that the Commission include, along

with the other enumerated standard conditions for 214 authorizations, a requirement that the dominant carrier file cable capacity conveyances that contain the information described alone.[8/] This position is consistent with the suggestion set forth in Section III, herein. MCI otherwise firmly supports the Commission's proposal to create a section of its rules to identify and clarify standard conditions imposed on carriers receiving Section 214 authorizations.

V. MCI SUPPORTS THE COMMISSION'S PROPOSAL TO REDUCE TO ONE DAY THE TARIFF FILING NOTICE PERIOD FOR INTERNATIONAL NON-DOMINANT COMMON CARRIERS

In August 1993, the Commission concluded -- in reducing to one day the tariff filing notice period for domestic tariffs -- that, "significantly streamlined tariffing requirements for nondominant common carriers ... will substantially serve the public interest by affording nondominant carriers increased flexibility to meet their tariff filing obligations."[9/] These rule changes, according to the Commission, "will promote price competition, foster service innovation, ... and enable firms to respond quickly to market trends."[10/] Since that time, nondominant common carriers have been subject to a one day notice

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[8/] Specifically, the information should include (1) name of party to be conveyed, (2) facility, (3) amount of capacity, and (4) price of conveyance.

[9/] Memorandum Opinion and Order, FCC 93-401, rel. August 18, 1993, at III(C).

[10/] Id.

period for their domestic tariff revisions. Indeed, all the reasons that underlay the rule applicable to domestic tariff filings are equally applicable to international tariff filings.

Specifically, there simply are no clear reasons or advantages in continuing to impose a fourteen-day notice period on nondominant common carriers in connection with their international tariffs. MCI is not aware of a single instance in which such a nondominant carrier has filed an international service tariff revision that has been successfully challenged.[11/] If, in fact, such an instance were to arise, the Commission, and consumers as well, have ample opportunity to take remedial action after the tariff becomes effective.[12/]

From an administrative perspective, the rules, as they currently exist, place an enormous burden upon carriers, such as MCI, who maintain for administrative ease single tariffs containing provisions pertaining to both domestic and international service. Given the dissimilar notice requirements for domestic and international service, significant complexities arise when a carrier wishes to introduce a new service containing

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11/ Indeed, the three largest interexchange carriers (including MCI and the dominant carrier) have sought and received notice requirement relief from the FCC, on an extended basis and without the requirement to seek special permission on a case-by-case basis, in cases where new international points of service are added to existing services.

12/ See Sections 205 and 208 of the Communications Act of 1934, as amended.

both domestic and international components. In such instance, the carrier must choose from among the following suboptimal choices: (1) issuing tariffs for domestic and international service simultaneously, while "staggering" the effective dates and thereby altering the ubiquitous nature of the service for the period of time between the different effective dates; (2) issuing tariffs for domestic and international service simultaneously with concurrent effective dates, thereby relinquishing the benefit of the streamlined rules for the domestic tariff revisions; or (3) staggering the issue dates of the domestic and international tariff provisions, thereby presenting to the marketplace an incomplete picture of the composite offering. Ultimately, the administrative burden originally placed upon carriers translates into confusion for consumers.

In summary, both carriers and consumers would benefit from permitting nondominant carriers to modify their international service tariffs on one day's notice. Given the absence of market power of nondominant carriers due to the relatively robust degree of competition in the interexchange marketplace, and thus the resulting inability of such carriers to engage in unjust and unreasonable marketplace practices, no legitimate interests of any other parties would be adversely affected if the flexibility afforded nondominant carriers in connection with their domestic tariff filings were extended to their international service tariffs. Furthermore, the earlier availability of new services

and rate adjustments in the competitive arena clearly would serve the public interest.

VI. MCI RECOMMENDS THAT THE COMMISSION INSTITUTE A FURTHER PROCEEDING IN THE EVENT IT OBTAINS FOREBEARANCE AUTHORITY

As fairly well settled in a number of judicial decisions over the decades, the FCC possesses substantial authority to modify its regulatory policies and programs to accommodate changing marketplace conditions. Thus, the FCC previously modified its tariffing and Section 214 requirements to meet growing competition by reducing the amount and degree of regulation imposed on carriers found to be nondominant because of their inability to exercise market power, while maintaining greater regulation for those possessing market power. As a general proposition, therefore, FCC regulation has varied over the past fifteen years based upon the degree of competition in a market segment. Such an approach, which is reflected in these comments, has served well and presumably would be the basis for the FCC's regulatory scheme under the current statute.

However, as the FCC learned from years of unsuccessful litigation, its legal ability to reduce regulation is not the equivalent of removing said regulation altogether. That can only come via an act of Congress which, as the FCC notes, may soon take place. If that occurs, and the pending legislation cited by the Commission becomes law, the Commission, as noted in the NPRM

(at n. 57), would need to make certain determinations about carriers, consumers, and the public interest before exercising its forbearance authority. Accordingly, the appropriate approach toward implementing forbearance would be for the Commission to institute a proceeding to develop a record upon which it could rely in making the judgments it must in order to comply with the statute.

Therefore, for the reasons stated above, the Commission should adopt the proposals set forth in its NPRM, modified as MCI recommends herein.

Respectfully submitted,

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